IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.572 OF 2006

Dinkar Prabhakar Shinde ... ... Appellant

V/s.

The Collector of Solapur & ors. ... ... Respondents

Mr.Amol P. Mhatre for Appellant.

Mrs.Geeta Mulekar and Mr.R.S.Khadapkar, AGP for Respondents.

CORAM : SMT. ROSHAN DALVI, J.

DATED : 26th July, 2007

ORAL JUDGMENT :

1. The Appellant has challenged the judgment of the learned 2nd Additional District Judge, Solapur, dated 21.10.2005 in Land Acquisition Reference No.48 of 1999 filed by the Appellant. The Appellant is one of the four brothers owning land under Gat No.369/1 to 5. The Appellant has been in possession of the land under Gat No.369/2 (Part) admeasuring 1 Hectare and 89 Ares. A part of these lands has been acquired by

the Respondents for construction of a canal. Each of the four brothers is entitled to 16 Acres. A compensation at the rate of Rs.7,520/- has been received by each of the brothers, excluding solatium. Only the Appellant has filed the Reference challenging the extent of compensation.

2. A Notification under Section 4 of the Land Acquisition Act came to be issued on 9.5.1996 for acquisition of the suit premises. An Award has been passed by the SLAO in Reference No.11 of 1996 on 6.2.1999. A notice of this Award is stated to have been sent by the Respondents and is stated to have been received by the Appellant on or before 8.6.1999. The notice is stated to have been sent by the Appellant for himself and on behalf of his other brothers also. A report of the Talathi to that end has been made on 8.6.1999. It is, therefore, contended that the notice has been received on or prior to 8.6.1999. The receipt of the notice is denied. The signature showing the receipt of the notice

of the Appellant on behalf of himself and his brothers is also denied. The Appellant has received his cheque for the compensation amount and it is deposited in his bank on 28.7.1999. The reference has been filed on 4.8.1999.

3. The reference has been challenged on the ground that it is barred by the Law of Limitation as also on merits upon the claim made by the Appellant. The Appellant claims an additional amount of Rs.20,000/- for acquisition of his land, admeasuring 16 Ares. The Appellant contends that the receipt of the notice is not shown, but the deposit of his cheque, which was on 28.7.1999, shows the receipt of the notice at around that time. He, therefore, contends that the reference filed on 4.8.1999 is well within time.

4. The Appellant has produced instances of sale to show the extent of compensation payable.

5. The learned Judge has considered both the aspects based upon the documentary evidence produced by the Appellant along with their oral evidence.

6. It has been contended on behalf of the Respondents by the AGP Mrs.Mulekar that the Reference itself was barred by the Law of Limitation. The Appellant was not present and represented before the Collector at the time the Award was made.

7. Under the proviso (b) of Section 18(2) of the Land Acquisition Act, 1894 (LA Act), the application was required to be made within 6 weeks of the receipt of the notice of the Collector by the Appellant or 6 months from the date of the award, whichever period shall expire first. The period has to be counted according to its expiry. Hence, under Section 18 the period out of these two periods whichever period shall first expire is the period that would determine the bar of limitation under the LA Act.

8. The Respondents have relied upon the list awardees showing the service of the notice upon the Appellant amongst others. This list is shown to have been signed by the Appellant as well as his brothers. The report relating to the service of the notice has been made by the Tahsildar. The date of the service of the notice is not shown on record. However, the report of service annexed to the list has been made by the Tahsildar on 8.6.1999. It is, therefore, contended on behalf of the Respondents by the AGP Mrs.Mulekar that the notice was received on or before 8.6.1999. Consequently, it is contended that the Appellant should have preferred his claim within 6 weeks from 8.6.1999 under Section 18 (2)(b) of the LA Act. That has not been done.

9. The Appellant has contended that he did not receive the notice. Hence, the evidence led by the Respondents with regard to the signature of the notice is to be considered. The Respondents have examined the officer Mr.Hulle. He has relied upon the report of the

Talathi and the list showing the receipt of the notice, by the signatures of the awardees. The Respondents have relied upon Entry No.31 in respect of the Appellant. It is shown to bear a signature in the last column, which is stated to be of the Appellant. It is identified by the said officer.

10. However, the list is undated. It is contended on behalf of the Appellant that since there is no date on the list showing the service of the notice, the period of 6 weeks from the date of the notice cannot be computed. That contention would have to be rejected in view of the report of the Talathi, which accompanies the notice and the service of notice is proved by direct evidence of the Respondents by their Officer identifying the Appellant's signature thereon.

11. The Respondents' list, so proved, shows the names of the parties who are awarded compensation as per the Award of the Collector, together with particulars of the payment and their signatures.

12. Since the Appellant has denied his signature, a comparison of the signature on the list with the Appellant's admitted signatures is required to be made.

13. The original Reference No.48 of 1999 preferred by the Appellant shows his signature.

14. The Respondents have also relied upon the certified copy of the extract of the register of the acquiring Authority showing the amount of compensation paid to the 4 brothers, including the Appellant by cheque given on 24.6.1999. That date is mentioned in column No.8, which relates to the date of handing over of the amount of compensation (*Paisa Ada Keleyachi Tarikh*). That entry is also signed by the Appellant himself. The entry or the receipt of cheque is not disputed by the Appellant.

15. A comparison between the three signatures under the provision of Section 73 of the Indian Evidence Act makes it abundantly clear that the signature on the list is that of none other than the Appellant. The

Appellant's bare statement that notice was not served upon him, therefore, cannot be accepted. The Tahsildar's report about the service of the notice dated 8.6.1999, therefore, has to be considered. The report, therefore, shows that the amounts stated in the list against the respective names were received by the parties who signed against those amounts on or before 8.6.1999. Under Section 18(2)(b) of the LA Act, a reference, if any, would have to be filed within 6 weeks from 8.6.1999. That period of limitation would expire on 20.7.1999. Reference is filed on 4.8.1999.

16. The Award was passed on 6.2.1999. The 6-month period therefrom would expire on 5.8.1999.

17. It is the period which expires first which is determinative of the period of limitation. The 6-week period from the date of the notice expiring on 20.7.1999 is the period which expires first in this case. It is, therefore, only that period which will have to be

seen for the commencement of the period of limitation in this case.

18. It is contended on behalf of the Appellant that the period of limitation must be counted from the date the sum of Rs.48,418/- is shown to be paid to the Appellant or deposited in the account of the Appellant. It is paid on 24.6.1999 and deposited on 28.7.1999.

19. Mere receipt of payment or deposit of the cheque in the bank account of the Appellant cannot start the period of limitation as contended by the Appellant. In fact, the date of the receipt of the cheque or the date of the deposit of the cheque is wholly extraneous for the purpose of calculation of the period of limitation specifically set out in Section 18(2)(b) of the LA Act. The Court is, therefore, only required to see the date of the receipt of the notice or the date of the Award. The Court has to compute the period of limitation from the date of the receipt of the notice or from the date of the Award being 6 weeks or 6 months, respectively. It is

only the period which first expires, which would determine the period of limitation.

20. It is contended on behalf of the Appellant that he has preferred his claim within 6 months from the date of the Award and hence, his application is not barred by the Law of Limitation. The Appellant has indeed preferred his application a day prior to the expiry of the 6 month period.

21. It is contended on behalf of the Appellant that the Appellant has a choice of the period of limitation and that choice is contained in Section 18(2)(b) of the LA Act itself. It is, therefore, contended that either the Appellant can file his application within 6 weeks of the receipt of the notice or within 6 months from the date of the Award. That contention is incorrect. No statute can give 2 periods of limitation for the choice of the Appellant. Section 18(2)(b) also gives no such choice. The period of limitation thereunder is 6 weeks from the date of the receipt of the notice or 6 months from the

date of the Award, **whichever period shall first expire**. (Emphasis supplied). Hence, the Appellant cannot choose the period of limitation and show that his choice is the period which later expired as in this case.

22. The reference is not filed within a period of 6 weeks from the receipt of the notice by the Appellant. The reference is, therefore, barred by the Law of Limitation contained in Section 18(2)(b) of the LA Act. Hence, despite sincere efforts made by the learned Advocate of the Appellant, the reference is seen as not maintainable.

23. The Appellant has received the compensation paid by the Respondents. His brothers have also received their share of the compensation. They have not challenged the Award. The evidence of the Appellant is that there is one well on Gat No.369/2 and that he was irrigating his land from the water of the well and that his land has been used as bagayat land for last 10/15 years.

He grew sugarcane, wheat and jawar on that land. The 7/12 extract shows the growth of the sugarcane, nuts and wheat grown on the land. It is, therefore, a cultivable land. The evidence of the witness on behalf of the Respondents that it is a jirayat land, which is not cultivable, is, therefore, not correct.

24. The Appellant has produced two instances of sale of irrigated lands which produce sugarcane. One of them is 4 km away. The sale-deed is of 12.5.1995, a year prior to the date of the notification under Section 4 issued in this case. The sale-deed shows consideration of Rs.85,000/- received for 40 Ares of the land. Hence, the consideration for 16 Ares would be Rs.34,000/- , as seen from Exhibit-28. That transaction is between brothers.

25. The other instance is of a land sold on 26.3.1995, which was also a bagayat land, in which consideration of Rs.1,80,000/- was received for sale of 1 Hectare 60 Ares out of 96 Ares of the land. - The consideration for

16 Ares would, therefore, be Rs.30,000/- . That sale-deed, Exhibit-29, is also of the transaction about one year prior to the date of the notification in this case. The merits of the Appellant's case need not be considered as his reference is barred by the Law of Limitation. The judgment and order of the learned Reference Court is upheld. The Appeal is dismissed. There shall be no order as to costs.

(SMT. ROSHAN DALVI, J.)